IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16843 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIVIBEN JIVANLAL MISTRY (PANCHAL)

Versus

SPECIAL SECRETARY

Appearance:

1. Special Civil Application No. 16843 of 2004

MR PANKAJ K SONI for Petitioner No. 1-3

Mr. Nagesh Sood, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 04/02/2005

ORAL JUDGEMENT

Leave to add Keshavlal Ambalal Patel and Kanabhai Kalidas Patel as petitioners No. 2 and 3.

2. Shri Pankaj Soni, learned advocate has submitted that they will be filing Vakalatnama on behalf of newly added petitioners during the course of the day. Rule.

Shri Nagesh Sood, learned AGP waives service of Rule on behalf of respondents.

3. In this petition under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 1.10.2003 and 21.11.2003 in Revision Application No. 51/1998 in dismissing the same and confirming the order passed by the Collector, Gandhinagar dated 20th April 1998. It appears from the record that the dispute is with regard to the land bearing Plot No. 878 admeasuring 135 sq.mtrs. of land situated at Sector No. 21, Gandhinagar. The said plot came to be purchased by the petitioner No.1 Jiviben Jivanlal Panchal pursuant to the order passed by the Collector, Gandhinagar, dated 4.9.1994 in a public auction on certain conditions. By virtue of the said conditions plotting of the plot in question was restricted. It appears from the record that without obtaining any prior permission the petitioner No.1 has sold the aforesaid plot in favour petitioners No. 1 and 2 and by two separate registered sale deeds and as it was found by the Collector, Gandhinagar that the same is in breach of condition No.3 of the Kabulatnama as well as condition No.8 of the Grant proceedings came to be initiated by the Collector, Gandhinagar. During the course of the argument and submissions on behalf of the petitioners an assurance was given that those two separate registered Sale Deeds will be cancelled and there will be one Sale Deed in favour of the petitioners No. 2 and 3 jointly. However, at the time of hearing before the Collector, nobody remained present on behalf of the petitioners and ultimately the Collector, Gandhinagar passed the order on 20th April 1998 holding that there is a breach of condition of the Kabulatnama as well as the Grant and the order came to be passed taking the land under the Government control. Being aggrieved and dissatisfied with the order passed by the Collector, Gandhinagar, dated 20th April 1998 the petitioners No. 2 and 3 preferred revision application before the Secretary (Appeals), Revenue Department, State of Gujarat, which was numbered as Revision Application No. 51/1998. The Secretary (Appeals), by judgment and order dated 1.10.2003/21.10.2003 dismissed the said revision application No. 51/1998 confirming the order passed by the Collector, Gandhinagar dated 4.9.1994 which has given rise to the present application under Article 226/227 of the Constitution of India.

4. This Court passed the following order on 28th December 2004.

"Mr. Soni, learned Counsel for the petitioner states that the petitioner as well as the purchasers are ready to have joint document as per the undertaking given before the District Collector and the petitioner is also ready to deposit an amount of RS. 2,500/= towards probable cost since the petitioner could not remain present before the District Collector.

In view of the above, Notice returnable on 11.1.2005. By ad-interim order, status-quo of the property in question shall be maintained on condition that the petitioner deposits the amount on or before 10.1.2005. S.O. to 11.1.2005. Direct service is permitted."

5. Shri Soni, learned advocate appearing on behalf of the petitioners has tendered two affidavits sworn before the Notary Public to the effect that the petitioners No. 2 and 3 are ready and willing to cancel the registered sale deeds in their favour and petitioner No.1 is ready and willing to execute a fresh registered Sale Deed in the name of petitioners No. 2 and 3 jointly by one document only. The affidavits are taken on record. It appears from the order passed by the Collector, Gandhinagar, dated 20th April 1998 that if during the course of the inquiry the petitioners had executed one document in favour of petitioners No. 2 and 3 jointly by cancelling the separate sale deeds in favour of petitioners No. 2 and 3 then the Collector, Gandhinagar would not have any objection . However for some reason nobody remained present on behalf of the petitioners and hence 2 separate registered sale deeds in favour of petitioners No. 2 and 3 could not be cancelled and one joint document could not be executed by the petitioner in favour of petitioners No.2 and 3 and for which the petitioners are penalised and the order has been passed. Therefore if the petitioners are permitted to cancel 2 separate registered sale deeds which are in favour of petitioners No. 2 and 3 and to have one joint document, then an appropriate order can be passed directing the respondents to reconsider their case.

5.1. At this stage, Shri Sood, learned AGP appearing on behalf of the respondents has submitted that apart from the aforesaid breach the construction which is put up by the petitioners is also illegal which is made without any prior permission and/or getting the plan sanctioned and/or BU permission. So far as that aspect

is concerned, it appears that there is no proceeding initiated against the petitioner. It will be open for the respondent authority to initiate appropriate proceedings in accordance with law and on merits if ultimately it is found that the construction which is put up by the petitioner is illegal and/or contrary to the sanctioned plan and/or without getting the plan sanctioned. However, so far as the order passed by the Collector, Gandhinagar dated 20th April 1998 and confirmed by the State Government with regard to breach of Condition No.3 of the Kabulatnama and Condition No.2 of the Grant with regard to plotting is concerned, in view of the undertaking and the affidavit-in-reply filed by the petitioners, on producing necessary documentary evidences within the period of one week from today before the respondent Collector, Gandhinagar, only 2 separate registered sale deeds in favour of petitioners No. 2 and 3 have to be cancelled and one joint document in favour of petitioners No. 2 and 3 is to be executed by the petitioner No.1, the respondent No.1 is directed to reconsider his order dated 20th April 1998.

6. If the Collector, Gandhinagar, is satisfied about the undertaking given the petitioners and on compliance of the terms of the undertaking, the Collector is directed not to give effect of the order dated 20th April 1998 and to pass an appropriate order afresh. The aforesaid exercise is required to be done within the period of six weeks from the date of receipt of this order in accordance with law and on merits and after affording opportunity of hearing to the petitioners. Rule is made absolute to the aforesaid extent with no order as to costs.

6.1. The amount of Rs. 2,500/= deposited by the petitioners be transferred to the account of respondent No.1. For that purpose, the Office is directed to issue the cheque drawn in the name of respondent No.1 to the Office of Government Pleader. D.S. is permitted.

[M.R. Shah, J.]

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